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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/592,921

09/14/2006

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EXAMINER

KENNEDY, NICOLETTA

ART UNIT

PAPER NUMBER

1611

NOTIFICATION DATE

DELIVERY MODE

07/14/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/592,921	<b>Applicant(s)</b> GILES ET AL.
	<b>Examiner</b> NICOLETTA KENNEDY	<b>Art Unit</b> 1611

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 6/24/11. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/N. K./ Examiner, Art Unit 1611	/Anne R Kubelik/ Primary Examiner, Art Unit 1638
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Continuation of 11. does NOT place the application in condition for allowance because: the rejections of record are maintained.

Applicant argues that one of ordinary skill in the art would not have been motivated to select the specific imidazoline quat taught by Pereira into Parr (remarks, p. 3). However, Parr specifically states that an imidazoline quat may be used in the skin-care composition and the substitution of the imidazoline quat of Pereira into Parr is the substitution of one known imidazoline quat used in personal care products for another.

Applicant further argues that Parr does not teach a single example containing two cationic surfactants (remarks, p. 3). However, Parr teaches that each of the claimed cationic surfactants claimed may be used and that mixtures thereof may be used (para. 0031). Thus, one of ordinary skill in the art would be motivated to use each of the cationic surfactants or mixtures of the cationic surfactants taught by Parr.

Applicant argues that the range for each component is not taught by Parr (remarks, p. 3). However, Parr teaches that the amount of cationic surfactant(s) is from 0.1 to 10% by weight (abstract). Thus, it would be within the purview of one of ordinary skill in the art to adjust the range of the cationic surfactants used to optimize the skin care product's feel on the skin.

Applicant next argues that one of ordinary skill in the art would not be motivated to apply Parr to improve the condition of hair (remarks, p. 3). With regard to claims 1-4 and 6-9, the phrase "hair treatment composition" is an intended use. However, as shown by the evidentiary reference, a composition applied to human skin is also necessarily applied to hair. Further, the composition is used to treat skin and since it is also applied to hair, it also treats hair. With regard to claim 11, again, the active step of the method as claimed is met. The composition is applied to hair and thus conditions the hair. There is no requirement in the claim that the hair be on the human head.

Finally, Applicant argues that hindsight is required to use Parr and Pereira to render the instant claims obvious (remarks, p. 5). However, the substitution of a known imidazole quat for another known imidazole quat and the manipulation of the ratio of cationic surfactants does not require hindsight. Absent unexpected results as to the ranges of cationic surfactant, requirement for these two specific cationic surfactants or requirement of the specific imidazole quat, the instant claims are prima facie obvious over Parr and Pereira as evidenced by Kids Health.

Applicant's only argument with regard to claim 8 is that this rejection does not remedy the alleged deficiencies of the primary rejection. Since the primary rejection is maintained, the rejection of claim 8 is maintained as well.